The Anoxville Whig.

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THE KNOXVILLE WHIG

Knoxville, Tenn., August 15, 1866.

Decision of the Supreme Court. JUDGES-SAM MILLIGAN, JAMES C. SHACKELFORD, AND ALVIN HAWKINS. THOMAS H. CALDWELL, Attorney General and Re-

THE STATE vs. CHARLES DAVIDSON, a free man of color Frior to the ratification of the amondment of the Constitu-tion of this State, on the 22d day of February, 1865, by which slavery was abolished, the defendant was a slave. Subsequent to the adoption of said amendment he was indicted in the Cir-cuit Court of Maury county for the crime of rape upon a free white woman; and at the January term, 1896, of said court, was arraigned, plead not guilty, was tried and convicted of the offense. The offense was committed in the month of March, 1864, and the jury trying the cause in addition, to find-March, 1864, and the jury trying the cause in addition to finding the defendant guilty of the crime charged in the indictment, also found that the defendant was a slave at the time
of the commission of the offense; thereupon, upon motion, his
Honor, the Circuit Judge, arrested the judgment upon the
verdict, and from this action of the court the Attorney General has appealed to this court. The first and most important
question presented for our consideration is this: Can the detendant, since his status has been changed from that of a
slave to that of a free man, he numished for the crime of carslave to that of a free man, be punished for the crime of rape upon a free white female whilst he was a slave; or, in other words, does the amendment to the Constitution abolishing davery in this State, operate as a pardon of the offenses so as to entitle the defendant to a discharge? The question is one fraught with interest, and is of vital

and such causes would, but for the provisions of that section, entitle the party to a new trial or to an arrest of judgment, or to a reversal of the judgment," such party is entitled to the relief notwithstanding the provisions of that section. But it will be observed, all the causes for an arrest of the judgment in this case, are not even enumerated in that sec. The cause stated in the 6th paragraph, is that "the clerk omitted to embody in the record the sesire/facias. It had already been holden, by this court, in the case of Conner vs. the State, ith Yer. 137, 140, 141, citing Gornwell vs. the State, M. & Yer. 137, and McClure vs. the State, lat Yer. 208, that it was not necessary that the temirafacias be spread upon the minutes of the court. The question is one fraught with interest, and is of vital importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the importance to all classes of our population, because of the court. It was enough if the record shows that the treative feature of the cairs, and the selections of the Grand Jury, between the importance of the court, and the fact and in the indication, and subject to the same in the importance of the court, and the fact and in the importance of the court, and the fact and in the indication, raud and intimidation, raud and intimidation, and the married into court, by the importance of the court. It was enough if the record shows that the indictions of the court, and the importance of the court, and the dissolved by collision, fraud and intimidation, raud and intimidation, raud and intimidation, fraud and i

been judicially determined; consequently, in its investigations we can derive no aid from the light of precedent, but must be guided alone by the light of reason in our efforts to discover the pathway pointed out by principles which, as we believe, are by analogy applicable to the case.

At the threshold of this investigation we think we may assume the general rule of law to be, that to authorize the punchases of the actuacy is must not only a property and the second of the shment of the accused, it must not only appear that, at the time the act was committed, it was declared unlawful, its punishment declared and fixed by law, and that there was a unal clothed with power and authority to try the offendent and enforce the penalty violation of the law; but such laws must also be valid and subsisting at the time of the trial, or no indement can be pro-nounced, or punishment indicted, and if either has falled, or is wanting at the time of the trial, such failure operates as a pardon of the offender, and entitles him to a discharge. The inquiry then becomes important what were the provisions of the law as it existed at the time of the commission of this of-fense, to-wit: in the month of March, 1861.

By reference to the Code, section 1,610, we find rape is de-fined to be the unlawful carna knowledge of a woman, forcibly and against her will. Section 1,611 declares, that "who-ever is convicted of the rape of any female of the age of ten years or upwards, shall undergo imprisonment in the peniyears or upwards, shall undergo imprisonment in the penitentiary not less than ten, nor more than twenty-one years."
Section 2,625, it is provided among other things that rape
when committed by a slave upon a free white female, shall be
capital, and punished with death by hanging. Section 2,629
provides "the Circuit and Criminal Courts shall have exclusive jurisdiction of all capital offenses committed by slaves,"
and section 2,630, provides that all other offenses committed
by slaves, may be tried by a single Justice of the Peace.
Section 4,967 declares "the Circuit and Criminal Courts have
original jurisdiction of all criminal matters not exclusively
confined by law in some other tribunal." Section 2,735 deconfined by law in some other tribunal." Section 2.725 de-clares that "all offenses made capital by this Code when com-mitted by slaves, shall be capital when committed by free per-sons of color." and section 2.632 provides that the trial of a slave for a capital offense shall be conducted in the same man-ner as that of a free person. Such were the provisions of the law as it existed at the time of the commission of this offense. law as it existed at the time of the commission of this offense.

entitled to an arrest of the judgment, but, as we have already shown, that section was not intended to withhold the relief in so far as they are deemed application to the question now be-fore the court. It is clear that at the time the act was com-mitted the law declared rape to be a crime, whether commit-ted by a white man, free man of color or a slave, fixed its puntherein existed. In the case of Isham vs. the State, I Sneed, 114, Judge Caruthers, in declaring the opinion of the court, said: "It must be presumed that the court would not permit any one to enter upon and discharge the important functions of this officer without the existence of some necessity and regular appointment." But in that case the indictment was preferred by the regular Attorney General, and an Attorney General protein, merely appeared in the prosecution of the case. And it must also be remembered that case was decided under the act of 1852, which declared the failure of the record to show the appointment of the record ishment and conferred jurisdictions upon the Circuit and Criminal Courts to try the offender, pronounce judgment and inflict the punishment. The crime committed by a free man of color or a slave is doclared capital, and upon conviction the offender is punishable with death by hanging, but if committed by a white man it is not capital, and is only pun-shable by imprisonment in the penitentiary. The only dif-ference in the case where the crime is committed by a white to show the appointment of the pro-tem, was not error. But in this case we scarcely have room for any such presumption, for on the same day upon which the Attorncy General pro-tem, asked leave to withdraw the indictment, the record shows man and the case where it is committed by a free man of color or a slave is as to the degree of the crime and consequent degree of punishment. The jurisdiction of the Circuit or Crimthat the Attorney General appeared in this cause. But it may be said, we must presume, the record is in error, and in fact it was the Attorney General protess. To this we answer aal Courts to try and punish the offender is full and complets. The trial of a slave or free man of color, charged of this or any other capital offenses, must be in all respects con-ducted in the same manner as the trial of a free white man we can only ascertain that there was in fact an Attorney General protein. To this we answer we can only ascertain that there was in fact an Attorney General protein. by presumption—and when presumptions become dangerous they cease to arise. No judgment can be pronounced upon either indictment. If the question to be determined by us was the right of the defendant to a new trial upon the facts of the case as presented in this record, we would feel constrained to deny the application and pronounce the suncharged with a capital crime. Then as to the degree of the crime—the manner and incidents of the trial—the tribunal having jurisdiction to try and punish the effender, and the extent of the punishment to be inflicted—it can make no difference to the defendant whether at the time of committing the crimes he was a free man of color or a slave, insemuch as prior to the abolition of slavery free men of color and slaves were alike subject to indictment, to be put upon trial, and, upon conviction, were also subject to the same punishment, the same tribunal having jurisdiction for that purpose, not only were they alike subject to indictment and to be tried in

fenses when committed by any other class, and provided cer-tain and peculiar modes for the punishment of the offenders as slaves, as well as all laws, which may properly be denomi-nated as police regulations for the government of slaves, al-

bough they may not in strictness be said to have been re-caled by said amendment, are nevertheless rendered inopera-

pecaled by said amendment, are nevertheless rendered inopera-tive and are as dead letters upon our statute books, there be-ing now no slaves to commit offeness or to try or punish. The jurisdiction given to the Circuit and Criminal Courts to try and punish slaves is limited to a certain class of crimes, whilst the jurisdiction to try and punish them for all other, and by far the most numerous class of crimes, is given to Justices of the Peace, but this latter jurisdiction can no longer be exer-cised, even though the offender was a slave at the time of the

et because he has since that time become a free man, and

from one tribunal to another simply because of a change in the

The tribunal having the jurisdiction at the time of com-

The law, as it existed at the time of the commission of the

effense with which the defendant is charged, and of which has been convicted, declared the act to be a crime, whether

perpetrated by a white man, a free man of color or a slave.— Therefore, it is not an offense only when committed by a slave. Further. The law as it existed at the time of the commission

f the offense, conferred upon the Circuit and Criminal Courts

h the defendant, is not because of, or dependent upon, the

fact that he is a slave.

The storm of the defendant is changed—nothing else. The

stroying the great and fixed principles of criminal practices so necessary to the protection of the liberty and life of the only were they alike subject to indicate that the terms and the same manner by the same tribunal, and upon conviction to the same punishment, but none of these were made in any manner to depend upon the status of the defendant either at the time of the commission of the crime or at the time of pronouncing the judgment. Unaffected by the amendment of the Constitution before referred to, the law now is precisely The judgment of the Circuit Court will be affirmed, and the prisoner will be remended to the jail of Maury county, to be kept in custody until he can be again indicted for the offense, or discharged by the Circuit Court of said county. In the view we have taken of this case, it is not now neces-sary to determine whether or not the description of the defen-dant in either court or indictment is sufficiently correct to the same as to the crime with which the defendant is charged, his trial and punishment as it was when the crime was committed, now let us see to what extent, laws existing prior to authorize us to pronounce judgment upon the verdict, but we think, perhaps, the better practice would be to state in the indictment his present status, as well as the status he occuthe time said amendment became a part of the Constitution have been abrogated or repealed thereby. Prior to the adop-tion of that amendment persons of color were held as slaves in pied at the time the offense is alleged to have been committed this State, and the right so to hold and exercise do and control over them as property was recognized by the Con-stitution and laws of the State, but by sec. I of article I of said amendment it is declared "that slavery and involuntary servitude, except as a punishment for crime, whereof the par-Attest: J. G. FRATER, Clerk.

THE STATE vs. J. S. SHARRER. This is a presentment for 'selling Wine and Alcon Sunday. shall have been duly convicted, are hereby forever abolish-i and prohibited throughout the State." All laws existing prior to the adoption of that amendment On motion, the presentment was quashed, and the Attorney General, on behalf of the State, presecuted an appeal, in error, inconsistent with its provisions or manifest purposes are by implication repealed. The manifest purpose of that amendment, as clearly appears from its language, was not only to abolish slavery as an existing institution, but to interdict its to this Court.

The sole question raised in the record, is, whether or not the sale of "wine or sie," on Sunday, constitutes an indictable offence under the statutes? The Code, Section 4,861, prowhile offence under the statutes. The Code, Section 4,501, provides: "No licensed grocer, or other person in this State, shall "retail spirituous liquors on Sanday." The previous section, 4,860, Chapter 9, Article 1st, declares that, "The providions of this article are to be construed liberally, so as to prevent evasions and subterfages, and to effectuate the object had in view. Without referring to other sections of the Code, which tend to elucidate the meaning of Section 4.861, we are satisfied that the words. "wiritings linner," need in this Section are stablishment in the future and to repeal all laws recognizing the right of property in man or recognizing the right of one man to exercise dominion over another as property, and to secure to the slave all the rights secured to free persons of color. By virtue of that amendment, the master lest dominion over his follow who had been his slave; the bondsman was located from his chains and he became a freeman and new became sed from his chains and he became a freeman, and now because of his caste belongs to that class of persons denominated free persons of color, and is entitled under the law to all the rights and privileges of such. Thus far, but no farther was the stems of the defendant changed by the amendment of the Constitution; all laws and such only as declared the existence of slavery, or recognized the right of property in man, or the stable to exercise dominion over him as property or withheld. that the words "spirituous liquors," used in this Section are evidently employed in a general sense, and intended to com-prehend all alcoholic or intoxicating liquors. The manifest object of the Legislature was to prevent the desecration of the Sabbath, which, by our law, is dedicated to the worship of God, and the exercise of religious duties b, the sale of an ar-ticle, the use of which is calculated to produce the most shame-less disregard of all the proprieties and duties of life. The re-fined distinctions between distilled and fermented liquors are right to exercise dominion over him as property, or withheld from slaves the rights and privileges of free persons of color, being inconsistent with the provisions and purposes of said amendment, are by implication repealed. Thus far, but no wholly unavailing when they contravene the purpose and obarther, can it be properly said, in a legal sense, the laws ex-sting prior to the adoption of said amendment are repealed hereby. Those are not of a criminal nature, as either declaror the alcoholic principle is separated by distillation or developed by fermentation. In either case, the effect produced on ing offenses by slaves or providing for their punishment, but are purely laws of property. Many laws, however, which were criminal in their nature, such as declared certain acts when committed by slaves to be offenses which were not ofthe person drinking it to excess, is the same.

HAWKINS, Judge

The judgment must be reversed. Attest: J. G. FRAZER, Clerk. AMISON & DOVEY, for the use, etc., vs. JOHN O. EWING. This is an action of trespass on the case, brought by Amison & Dovey, for the use of J. G. Fisher & Co., in the Circuit Court of Davidson, against John O. Ewing, to hold him individually liable upon its acceptance, indersed upon five different orders, which are properly described in the declaration, and constitute the foundation of this action. To the declaration there is a demurror, setting on it an over, the several orders, with the indersements thereon, and assigning as cause of demurrer that the defendant did not become liable to pay the several sums mentioned in the orders sued upon in his individual right, but that the Nashville and Northwestern Bailroad Company, of which he was treasurer at the time, are re-

road Company, of which he was treasurer at the time, are rereceases he has since that time become a free man, and free men cannot be tried and punished under a law applicable and intended alone for the trial and punishment of slaves as a class. Before they became freemen, and while they were slaves, the Circuit and Criminal Courts had no jurisdiction to try and punish them for the offenses—jurisdiction of which was given exclusively to Justices of the Peace. The jurisdiction to by them indorsed to J. G. Fisher & Co. The language of these class. tion to try and punish an offender cannot be transferred drawers, are as follows, viz:

"Mr. John O. Escing: Pay to the order of Amison & Dovey, inety dollars, on or before the 22d of this month.

J. H. McApoo." mitting the offense had lost it. It therefore follows that in all such cases the amendment to the Constitution operates as a pardon, and entitles the party to a discharge because of a total failure of jurisdiction to try and pronounce judgment against the offender.

But how is it with reference to this case?

The law as it existed at the time of the commission of the J. H. McApec."
The other two orders, differing only in amounts, dates, and the names of the drawers, are in the following language, viz:

NASHVILLE, April the 6th, 1861.

John C. Ewing, Treas, of the N. & N. W. Railroad Company: Pay to Amison & Dovey two hundred and fifty-five dollars, and charge to February estimates.

John Smith & Co. The language of the defendant's acceptance indersed on all of the orders, are in these words, viz:

"Accepted, payable on return of March estimates.

Criminal Courts of this offense, color, or slaves, color, or slaves, to try and pundent upon, the hing else. The unish the defendance of color, was the common law, that a public agent is not individually liable on contracts of undertakings made by him within the same nament and of color, was this state of facts the only question arising on the record is, whether or not, the defendant is individually liable on his acceptances? And we think he is not. He acted in the character of a public agent, and the law is well as upon the principles of common law, that a public agent is not individually liable on contracts of undertakings made by him within the scope of his agency, or in conformity to the established and known course of the basiness he is employed to transact. He may, it is true, transact the scope and limits of his agency, or withhold his Jonn O. Ewing, Treas. jurisdiction to try and punish persons guilty of this offense, whether they were white men, free persons of color, or slaves. Therefore, the jurisdiction of the Circuit Court to try and pun-The stease of the defendant is changed—nothing.

The stease of the defendant is changed—nothing for the stease of the defendant of the Circuit Court to try and punish the defendant abelishing slavery, had be been then a free man of color, was as full and complete as it is now to try and punish a free man of color for the same crime committed since the abelition of slavery, and the jurisdiction to try and punish the defendant, even were he still a slave, is precisely the same as to try and punish a free man of color, or a white man, for the same of punish a free man of color, or a white man, for the same of punish a free man of color, or a white man, for the same of punish a free man of color, or a white man, for the same of punish a free man of color, or a white man, for the same of punish a free man of color, or a white man, for the same of punish a free man of color, or a white man, for the same of punish a free man of color, or a white man, for the same of punish a free man of color, or a white man, for the same of punish a free man of color, or a white man, for the same of the contract was given to the contract was made with the railroad company; the credit was given to the corporation, and the defendant, again, and not his principal, or that the terms of the contract was made with the railroad company; the credit was given to the corporation, and the defendant agency from the person with whom he deals, so as thereby to make himself personally responsible. But it all such case, we imagine it will be found, that the credit was given to the agent, and not his principal, or that the tredit was given to the corporation, and the scope of man of known course of the business he is employed.

crimes, and extent of the punishment before mentioned. We are, therefore, wholly unable to discover upon what principle the Gircuit Court is ousted of its jurisdiction to try and punish the defendant, whether he was a free man of color or a slave, by the mere fact that at the time the offenss was committed he was a slave, and has since become a free man of color.

Neither the law declaring the offense of which the defendant stands convicted and affixing the punishment, or the law conferring upon the Circuit Court the jurisdiction to try him upon the charge, and to prohounce ledgment upon his conviction, are inconsistent or in conflict with either the provisions or purposes of said Constitutional Amendment, and, therefore, they are neither repealed, abrogated, suspended or rendered inoperative thereby. We are, therefore, of the opinion that the fact that the defendant was a slave at the time of the commission of the offense, and has since been emancipated, being now a free man of color, constitutes no ground for arresting the judgment upon the verdict of the jury.

This seems to have been the ground upon which his Horor the Gircuit Judge arrected the judgments, and the questions involved have been argued by counsel with great force and ability.

But other questions arise upon the record which we cannot determine the punishment of the punishment of the offense, and the find out of which the orders, and designated the fund out of which the orders, and designated the fund out of which the orders, and designated the fund out of which the orders, and designated the fund out of which the orders, and designated the fund out of which the orders, and designated the fund out of which the orders, and designated the fund out of which the orders, and designated the fund out of which the orders, and designated the fund out of which the orders, and designated the fund out of which the orders, and designated the fund out of which the orders, and designated the funds out of which the orders, and designated the fund out of which

substance of the testimony in the case is, that signs of blood were seen on the turnpike, which were traced to a place in the field where a small shoat, unmarked, weighing forty or fifty pounds, partly skinned was found. From this place there appeared to be a track leading in the direction of the prisoner's house, which was followed and the prisoner was seen running, and shortly thereafter he was found on a wagon. He was told by the witness that he would arrest him, when he replied "he reckoned not," and thereupon drew a knife and advanced on the witness, who gave back and the prisoner ran off. He was then pursued by a party on horseback for several miles and shot at, and finally ovetaken and arrested. After the arrest, and when he had been under guard about two hours, he took the witness aside and told him, "if he would let him off he would give him two shoats and all the money he had."

It further appears that the prisoner told a colored woman, who was examined as a witness against him, that he wanted to borrow a bag to get some turnips in, and asked her to go with him, and on the way he said he had a hog over the hill, and that he would give her a piece of it. She declined going further, and returned.

One of the witnesses stated that the property alleged to have been stolen belonged to Mrs. Leak. He knew her hogs and believed this one to be her property; but he did not know whether she had parted with it or not. Mrs. Leak resided about even miles from the place of trial; was at home, but was not called as a witness.

It cannot be denied that the facts and circumstances of this foreman of the grand jury," which was, by order of the court, spread upon the minutes of the court, and is signed "Archilaus M. Hughs, Attorney General for the lith Judecul Circuit."

This indictment contains two counts. The first charges "That Charles, a negro, and then the slave of John Davidson, on the first day of July, eighteen hundred and sixty-four, in said county of Maury, feloniously did assault one Louiss Watson, a free white woman, and then and there did unlawfully and feloniously carnally know her, the said Louiss Watson. The second count is substantially a copy of the first, except that it charges "that Charles Davidson, a negro, on," &c. To this indictment the defendant plead "Not guilty" on the same day it was returned into court. Afterwards, and at the encoding Au-gust term, 1865, of said court, the following entry appears of record

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TERRITO SPRING

character a greater latitude of construction than is warranted by the plain and obvious import of the words of the statute.—
Did the Legislature mean thereby that a person who had been tried upon the merits of his case upon a plea of not guilty, and convicted, should not be entitled to a new trial or arrest of judgment because of the existence of all the causes enumerated in that section! We cannot believe the Legislature could have intended or desired to effect a change so radical in the criminal practice of the State, or that the language employed in that section will warrant any such construction.

employed in that section will warrant any such construction. The language is, "He shall not be entitled," etc., "for any of the following causes," and must be construed as though it read, "for any one of the following causes." This we believe to be the obvious meaning of the language employed, and, consequently, if more than one of the causes mentioned exists, and such causes would, but for the provisions of that section, entitle the party to a new trial or to an arrest of judgment, or

signs the indictment as Attorney General protem was appointed, was not error, seems not to have been transferred to the Code, but in lieu the eighth clause of said section 5,242 was

adopted, and if this were the only one of the defects or omis-sions enumerated in that section to be found in this record, which, but for that section, would have entitled the defendant

to an arrest of the judgment in this cause, he would not be

ases where all or more than one of the causes enumerate herein existed. In the case of Isham vs. the State, I Sneed

coeding August term, 1865, of said court, the following entry appears of record

STATE OF TENNESSEE VS. CHARLES DAVIDSON.—Indicament for Rope:—This day came Robert L. Caruthers, Attorney General pro tem., and moved the court to withdraw the indictment in this cause for the purpose of sending up before the Grand Jury an additional count to said indictment, and the court ordered the same to be done.

Then follows in the record what appears to be an original indictment, in which it is charged "that Charles Davidson, a free man of color, on the said 1st day of July, 1864, etc." charging the crime of rape, substantially the same is charged in the Indictment found at the pre-eding term of the court. This indictment is signed, "Robert L. Caruthers, Attorney General pro tem.," and is indorsed, "additional count—State vs. Charles Davidson, Indictment for Rape. Robert Jamison, prosecutor." It is also indorsed "a true bill. Nathaniel T. Moore, foreman of the Grand Jury;" and on the same day, to wit; 4th of September, the following entry appears in said cause:

"This day came, as well the Attorney General as the defendants, and the additional count in this indictment being read to and in his hearing, he pleads therete, that he is not gullity."

At the following January term, 1866, of said Court, the dewas not called as a witness.

It cannot be denied that the facts and circumstances of this

It cannot be denied that the facts and circumstances of this case produces a strong suspicion of the guilt of the accused, but without first proving the corpus delicti—that is that the hog had been stolen—they are not of themselves sufficient to justify the conviction of the prisoner of a felony. The case of Tyres vs. the State, 5 Hump, 33, presents a stronger case than the one before the Court, and it was held in that case that the evidence establishing the corpus delicti was too slight to sustain a verdict of conviction.

The alleged confessions of the prisoner are entitled to but little consideration. He was under arrest at the time, and surrounded by a strong guard, had been chased and shot at, and at most only made such statements as tended to implicate him in the crime of which he was accused. He did not admit the crime or say anything, except inferentially, which coupled him with it.

In like manner the statements of the prisoner to the color-

to and in his hearing, he pleads therete, that he is not guilty."

At the following January term, 1800, of said Court, the defendant was arraigned and tried upon both indictments, the court regarding them as several counts in the same indictment. Upon the trial of the case, the Circuit Judge instructed the jury that upon the second count, which charges the offense to have been committed by a negro, no conviction could be had, consequently the conviction was upon the first, or what is denominated in the charge of the court, the third count in the indictment, and the question now is, can the conviction be sustained as to the indictment found at the flay term, 1805. We may briefly state, 1st, The record wholly fails to set out the remajorist or to show that one was returned into court at that term. 2d, It fails to show that any Grand Jury was elected, impaneled, sworn or charged at that time, or that any one was appointed foreman thereof.—3d, It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that there was appointed foreman thereof.—3d. It fails to show that any of the following causes," and an and is tried upon the merits and convicted, he shall not be entitled to a new trial, or to an arrest of judgment, or to a reversal of the judgment for any of the following causes," and nine different causes are there stated. We cannot give to a statute of this character a grea him with it.

In like manner the statements of the prisoner to the colored woman, in the absence of proof of the corpus delicti, are too
vague, uncertain and unsatisfactory to predicate a conviction
upon. Suspicious as they may be, they are not inconsistent
with the prisoner's innocence, and in our opinion insufficient
to establish the corpus delicti, or the fact that the property was
stolen. It was the duty of the State to have called Mrs. Leak,
who it appears was within the jurisdiction of the court, and
within a few miles of the place of trial, who doubtlessly could
have removed many of the doubts that naturally arise in this
case. The judgment must be reversed and a new triel awarded.
MILLIGAN, Judge.

Attest: J. G. FRAZER, Clerk.

ICHEBOD F. CAMERON vs. CAROLINE CAMERON. This is a bill filed in the Chancery Court at Nashville for divorce. The bill alleges that in 1850 the complainant and de-fendant were married in the State of Pennsylvania, and early in 1860 the complainant removed to Tennessee, where he has resided ever since. The defendant did not accompany her resided ever since. The defoudant did not accompany her husband, as it is alleged, and 'share his fortune and destiny,' but remained behind, where, it is charged, she has been living in adultery, and in consequence of her illicit intercourse, since the separation, has become the mother of two children, the paternity of which is denied by the complainant.

No plea or answer was filed by the wife, but it appears publication was resultable was a walk and a independent of confession. likation was regularly made and a judgment pro confesso en-tered against the defendant. The proof establishes the adul-tery of the wife beyond controversy, but fails to charge any-thing in relation to the complainant's character for virtue and chastity since the separation. The Chancellor dismissed the bill, and there is an appeal, in error, prosecuted to this Court.

ourt.

There is no error in the decree of the Chancellor. The marriage contract is peculiar, and in many respects different from all others. It is for life, and the parties have no power, by mutual consent to dissolve it. The moment it is solemnized, society, for the wisest reasons is interested in the fidelity with which it shall be observed; and it cannot be annulled without the consent of the tribunals of the country, specially clothed with such power. The law itself will not allow a divorce, even upon the solemn admission of the parties in the pleadings. The facts of the admission necessary to predicate a decree upon, must be established by clear and satisfactory evidence. Were the law otherwise, the bonds of marrimony The Code, section 2,400, deplaces: "If the cause assigned for divorce be adultery, it shall be a good defense, and perpetual bar to the same, if the defendant allege and prove.

1st. That the complainant has been guilty of a like crime.
2d. That the complainant has admitted the defendant into

defect as will not be cured by the provisions of the 7th clause of section 5,242, of the Code before referred to, especially if it was indered "a true bill," before it was withdrawn, and at a former term of the court. That indersement is by the clause before mentioned after a trial upon the merits made evidence of the fact that the indictment had once been returned into the fact that the indictment had once been returned into the fact that the indictment had once been returned into the fact that the indictment had once been returned into the fact that the indictment had once been returned into the fact that the indictment had once been returned into the fact that the indictment had once been returned into the fact that the indictment had once been returned into the fact that the indictment had once been returned into of the fact that the indictment had once been returned into of the fact that the indictment had once been returned into court by the Grand Jury, but it cannot be regarded as evidence that it has been properly returned the second time.—
But we are not aware of any authority for withdrawing an indictment at a term of the court subsequent to the term at which it has been found, and recommitting it to a different which it has been found, and recommitting it to a different of Grand Jury for amendment by the addition of new counts or otherwise, and believe none such can be found.

The bill of indictment, entitled of the August term, 1865, cannot be considered as an amendment of or additional count. wife's prestitution, and received him therefor.

th. That he exposed her to lewd company whereby she beband and wife. And this is as necessary after judgment pro-confesso, as after admission of the fauts charged in the bill —

The bill of indictment, entitled of the August term, 1860, cannot be considered as an amendment of or additional count to the indictment found at the preceding term, but it is a new bill and must have been prepared, acted upon and returned into court, with all the formalities required by law. How is this? The record fails to show that any remirafacins was returned into court, or that any Grand Jury was elected, impaneled, sworn or charged at that term of the court. It confesso, as after admission of the fasts charged in the bill— The evidence, and not the pleadings and presumptions of law, constitute the ground of divorce. And no presumptions of good character or conduct, which might arise—nothing appearing to the contrary in other cases, are sufficient, in cases of divorce, to supersede the necessity of affirmative proof. wholly fails to show the appointment of any foreman of the Grand Jury, or that said indictment entered into court, by the Grand Jury or any one else, or was ever entered upon the minutes of the court. It fails to show the appointment of the Attorney General pro tem, or the existence of such facts as authorized the appointment. The act of 1852, which provided that the failure of the record to show that the person who Affirm the decree. MILLIGAN, Judge. Attest: J. G. FRAZER, Clerk.

E. H. CHILDRESS, in error, vs. WINNIE WRIGHT. This case originated before a Justice of the Peace of David This case originated before a Justice of the Peace of David-son county. The warrant is in trespass, and the damages are claimed for the alleged unauthorized removal of a small wood-en house, which a sutler had erected on the lands of the do-fendant. The Magistrate gave judgment for the plaintiff be-low, and the defendant appealed to the Circuit Court, when, upon the agreement of the parties, the cause was tried by the residing Judge without the intervention of a jury. The Juspresiding Judge without the intervention of a jury. The Jus-tice's judgment was affirmed, and an appeal was prosecuted

The facts necessary to be noticed are as follows, viz: Du The facts necessary to be noticed are as follows, viz: During the time this part of the State was occupied by the Federal army, a regiment of soldiers encamped on the lands of the defendant, and a sutter built a noise thoroon, which after wards he sold to the defendant in error for ferty-five dellars. The building was constructed of wood, and the planks, which constituted a part of it, were nailed to the upright posts and studding. The freehold upon which it was creeted was owned by the defendant, and after the removal of the troops he declared his purpose to disregard the sale, and to appropriate the building to his own use. And thereupon he was told by the defendant in error, she would sue him. He disregarded this admonition, and bauled off the plank and applied them to other purposes." And this action is brought to plied them to other purposes." And this action is brought to recover the value of the house. It is insisted under this state of facts, that the sale by the sutler to the plaintiff was utterly void, and communicated no

title to the house, that it was a fixture and attached to the freehold. The law, on that subject, we think, is well settled. By the common law everything affixed to the freehold was qubject to the law of the freehold. But in more modern times the rigor of this rule has been greatly relaxed in favor of ten-ants, and faxtures erected for the benefit of trade. But in the case of Degraffenreid vs. Scruggs, i Humo, 454, this court said: "As between executor and heir, and between the vendor tance of the law, but were we to pronounce judgment upon this verdict, in the language of Judge Turly, in the case of Hite vs. the State, 9th Yer., "we would feel that we were deand vendes, the original rule prevails, and whatever is affixed to the freehold passes with it. See, also, 2 Kent's Com.,

If such is the rule between executor and heir, and vendor and vendee, much more is it applicable between a wrong door and the rightful owner of the freehold. The house in controversy, so far as the record discloses the facts, was erected without the permission of the owner of the freehold, or without any order of the military commander encamping his troops on the land; and when once erected, and attached to the freehold, it passed under the right of the soil, and could not be sold and transferred by the sutler who erected it. The judgment is reversed and a new trial is awarded.

MILLIGAN, Judge. Attest : J. G. FRAZER, Clerk.

A. C. CARTER vs. TURNER S. FOSTER of fal. The decree of the Chancellor is correct, in the first place, the complainant fails to show his compliance with the statutes conferring upon creditors the right to redeem. He must credit or offer the debter with ten per cent. on the amount of his debt, in case it be for a less sum than the amount bid upon debt, in case if he for a less sum than the amount bid upon the land, and this is a condition precedent to his right to re-deem, with which he must show he has complied. The judgment in favor of Hudson and wife vs. McKay were liens upon the land of McKay for twelve months. After these liens attached, McKay conveyed the land in trust to Foster, to secure creditors. By this conveyance the title to the land was vested in the trustee, subject to said liens. Discharge these liens, and the land was subject to the purposes of the trust. The land was sold to satisfy the decrees of the Chancery Court, and purchased by the trustee, and as such, and in the character of trustee, removed the incumbrances of the liens for the purpose of carrying out the object of the trust; thereby the title in the trustee became perfect under the trust deed, and under such circumstances he could not be permitted to set up the title which he may have acquired at the Sheriff's sale, in hostility to his rights as trustee, and thus defeat the very object of his judiciary office. Whether he had express power in the trust deed to use the trust fund in his hands to purchase in for the benefit of the cestal gas trust outstanding purchase in for the benefit of the cestui one trust outstanding incumbrances upon the trust property, can make no difference to parties having no rights or interest under the trust deed. They cannot be heard to complain of misapplication of the trust fund, made in good faith, the better to enable the trustee to carry out the objects of the trust by increasing the fund in his hands. Therefore the land was not subject to redemption by the creditors of McKay in the hands of Foster. Neither can the creditors of McKay insist upon the application of more of the trust fund than was necessary to remove the incumbrances upon the land, and therefore complainant tion of more of the trust fund than was necessary to remove
the incumbrances upon the land, and therefore complainant
has no right to enforce the satisfaction of the judgment out of
the excess bid by Foster for the land over the amount of the
judgment. If Foster had paid it over it would have belonged
to the trust fund, under the deed, and not to McKay. So we
do not think the complainant is entitled to relief upon either
ground, and the decree of the Chancellor will be affirmed.

HAWKINS, Judge.

Attest: J. C. FRAZER, Clerk. STATE vs. S. MITCHELL. This is an indictment for usury against the defendant in error. The charge in the indictment is the defendant unlaw fully did exact and claim off of and from one John P. Mitchell the sum of sixty-five dollars, for the loan, deliverance and use of sixty-five dollars, at terms usurious, &c. The defendant moved to quash the indictment, which motion was sustained by the court. The Attorney General appealed. We think the court erred in quashing the indictment. An offense is distinctly charged. The words "did exact" are sufficiently comprehensive.

The term implies to inforce, to exact. Did exact implies to inforce the payment-a more comprehensive word to express the illegal act of the usurer could not be used. The judgment is reversed and the cause remanded to the Circuit Court of Macon for further proceedings.

SHACKELFORD, Judge. Attest : J. G. FRAZER, Clerk. CIRCUIT COURT-MADISONVILLE. PETITION FOR DIVORCE. Elizz A. Wilkens vs. John M. Wilkens.

THIS CAUSE IT APPEARING A from the allegations in the bill that the defendant is a non-resident of the State of Tennessee: It is therefore ordered that publication be made for four successive weeks in Browntow's Whig, notifying said defendant to appear at the next term of the Circuit Court, to be held for the county of Monroe, at the court house in the town of Madisonville, on the second Monroe of Monroe day of September next, then and there to plead, answer, ordemur to complainant's bill filed in this cause, or the same will be taken as confessed and set for bearing ex parte.

August 1, 1866-8tpf5 WM. M. SMITH, Clerk.

Attachment. James P. Balch vs. Emsley Bettes

THIS SUIT WAS COMMENCED BY Attachment before a Justice of the Peace. It appearing from the affidavit of the plaintiff on which the attachment issued in this case, that the defendant is justly indebted to him, and that he has absconded so that the ordinary process of the law cannot be served on him, and the attachment having been levied upon the lands of the defendant. On motion, it is ordered that publication be made in Brownlow's Whig for four successive weeks, requiring said defendant to appear before me at my house, near Dandridge, Jefferson county, Tenn., on the first day of March, 1867, and defend the suit thus commenced, otherwise the cause will be proceeded with ex parte.

augl-4t° JAMES H. CARSON, J. P.

Attachment.

A. E. Wilkins vs. Ben. Dickey. that the fact that the defendant was a slave at the time of the commission of the offense, and has since been emancipated, being now a free man of color, constitutes no ground for arcesting now a free man of color, constitutes no ground for arcesting the judgment upon the verdict of the jury.

This seems to have been the ground upon which his Holor the Circuit Judge arrested the judgment, and the questions involved have been argued by counsel with great force and ability.

But other questions arise upon the record which we cannot overlook. At the May term, 1865, of the Circuit Court for the county of Maury, as appears from the record, the Grand Juctor of Maury, as appears from the record, the Grand Juctor for the facts of this case, in the legal liability of the defendant is indebted to him and so absconds that the ordinary process of law cannot be served upon him and the ordinary process of law cannot be served upon him and the official to have been argued by counsel with great force and ability.

Eligible Younkins, a free man of color, vs. THE STATE.

The prisoner, John Younkins, a free man of color, was indicted and convicted in the Criminal Court of Davidson for stealing a hog. The indictment lays the property stolen in one Ammad Leak. There is no exception to the charge of the four successive weeks in the fact that the corpus delicti is not sufficiently proven. The THE PLAINTIFF, ON AFFIDAVIT,

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Charlotte, Mich., March 13th, 1866. J. H. Duvall-Sin: My Mill and Engine is giving the best of satisfaction. I had it running in five days after receiving it.— The first day after starting the Mill, we sawed 43 logs into inch immbe, making 10 645 feet in nine hours. On the second day we sawed 13,830 feet in 10% hours. It was timed at one time when it cut 6 boards, 16 feet in each board, in one minute.

Yours, truly, GEO. N. POTTER.

Atpine Depot, W. V., Sept. 22, 1865.

J. H. Duvali—Sis: With the assistance of Mr. Hardesty, we have just completed the setting up of the Portable Engines and Mills purchased of you. Mill No. 1, the first day cut at the rate of 1,500 feet of Oak and Pine lumber per hour. Mill No. 2, we have just started and with equal success. They are working to our entire satisfaction, and we feel confident that the machinery Yours, truly, STRINE, BOYD & CO. will do all you advertise.

Wilsoncille, Spencer co., Kg., May 31, 1860.

Messrs. Duvall—We sawed 6 500 feet of boards out of seventeen logs, the first day we started our mill, without moving a screw in seven hours. We believe your portable engines and saw mills second to none in use, and most cheerfully recom-mend any in want of saw mills and engines to your shop. T. L. COLLIER & PRUSSELL.

Cross Plains, Ripley co., Ind., Feb. 21, 1861.

Messrs. Duvall—To-day we sawed 14,000 feet of lumber in
less than ten hours. About three-fourths of it was inch lumber. The mill does very well. Yours, truly.

SAMUEL BENNET & CO. Braintram, Wyoming co., Pa. May 1, 1865.

J. H. Duvall-Sin: The Engine and Mill purchased of you,

which Mr. Hardesty has started, will do more work than you promited, and in the best manner. It will saw from 10,000 to 15,000 feet in ten hours. WALTMAN & GAY. Hancock, Md., Nov. 13, 1865. J. H. Duvall—Sin . The Saw Mill of twenty horse power pur-chased of you, has been set up by Mr. Hardesty. On Saturday last we sawed 8,000 feet in eight hours. We can safely say that it exceeded our expectations.
Yours, truly, BRIDGES, HENDERSON & DANIELS.

Fulton, Itawaba co., Miss., Aug. 25, 1860. Mossrs. Duvall—We have been running the portable engine, saw mill and corn mill we purchased of you some months ago. We average in tough, scrabby pine, from 8,000 to 10,000 feet of lumber per day, and could, were we to hurry our hands, saw twelve thousand feet per day. We grind 20 to 25 bushels of corn per hour.... Many persons have rode twenty and thirty miles to see our mill. She is the wonder and admiration of all. We cheerfully recommend them to those in want of mills and engines.

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References.—Washington City.—Hon. Andrew Johnson,
President of the United States.

Nashville, Tenn.—Gov. W. G. Brownlow, Maj. Gen. Geo.
H. Thomas, Brig. Gen. Wm. D. Whipple, Brig. Gen. R. W.
Johnson, Brevet Brig. Gen. Clinton B. Fisk, Brig. Gen. J. L.
Donaldson, Hen. John Hugh Smith, Hon. J., S. Fowler. Hon.
John Trimble, Hon. Edward H. East, J. B. Knowles, A. B.
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Leave Nashville for Johnsonville, and all points West and Northwest, at 4:20 p. M., arrive at Johnsonville at 9:30 p. M. Returning, leave Johnsonville 1:40 A. M., arrive at Nashville at 6:50 A. M. Trains on N. and N. W. Railroads connect at Johnsonville rith first class line of Steamers for Paducab, Cairo and St. Berths and meals free on Steamers connecting with N. and Passengers by this route save expense of sleeping car and meals between Nashville and Cairo. Trains stop at all intermediate points.

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